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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 PENSICO TRUST COMPANY  
9 CUSTODIAN FBO JEFFREY D.  
10 HERMANN, IRA ACCOUNT NUMBER  
11 20005343,

12 Plaintiff,

13 v.

14 LORINA DELFIERRO, *et al.*,

15 Defendants.

)  
) CASE NO. C16-1926 RSM  
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)  
) ORDER GRANTING PLAINTIFF'S  
) MOTION TO DISMISS  
) COUNTERCLAIMS  
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16 **I. INTRODUCTION**

17 This matter comes before the Court on Plaintiff's Motion to Dismiss Defendant  
18 Delfierro's Counterclaims in this action. Dkt. #33. Plaintiff argues that Defendant's  
19 Counterclaims are barred by the doctrine of *res judicata*. *Id.* Defendant filed a Response, but  
20 the Court has stricken it as untimely. Dkts. #38, #39 and #42. For the reasons set forth below,  
21 the Court now GRANTS Plaintiff's motion.  
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23 **II. BACKGROUND**

24 Plaintiff filed the instant action in King County Superior Court on November 14, 2016,  
25 seeking a judicial foreclosure on Ms. Delfierro's residential property. Dkt. #4. On December  
26 16, 2016, Defendant Delfierro removed the action to this Court on the basis of diversity  
27 jurisdiction. Dkt. #1. Defendant subsequently filed an Amended Answer in this matter and  
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1 alleged four Counterclaims against Plaintiff for: 1) Wire Fraud under 18 U.S.C. § 1343; 2)  
2 violations of 18 U.S.C. § 152; 3) violations of Washington’s Consumer Protection Act; and 4)  
3 False Claims. Dkt. #31 at Counterclaims ¶¶ 4.1-4.23. Although difficult to discern from the  
4 Amended Answer, Defendant alleges as the bases for her Counterclaims that there is no effective  
5 chain of title with respect to her property, that certain sums of money have not been accounted  
6 for and have been taken fraudulently, and that certain title documents have been improperly re-  
7 sequenced. *Id.* Plaintiff now moves to dismiss the Counterclaims as barred by the doctrine of  
8 *res judicata*.  
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### 10 **III. DISCUSSION**

#### 11 **A. Legal Standards**

##### 12 *1. 12(b)(6) Motions*

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14 Plaintiff brings this motion pursuant to Federal Rule of Civil Procedure 12(b)(6) for  
15 Plaintiff’s failure to state a claim upon which relief may be granted. On a motion to dismiss for  
16 failure to state a claim under Rule 12(b)(6), all allegations of material fact must be accepted as  
17 true and construed in the light most favorable to the nonmoving party. *Cahill v. Liberty Mut. Ins.*  
18 *Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). However, the Court is not required to accept as true a  
19 “legal conclusion couched as a factual allegation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)  
20 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). The Complaint “must contain  
21 sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.”  
22 *Id.* at 678. This requirement is met when the plaintiff “pleads factual content that allows the  
23 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”  
24 *Id.* Absent facial plausibility, a plaintiff’s claims must be dismissed. *Twombly*, 550 U.S. at 570.  
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1           Though the Court typically limits its Rule 12(b)(6) review to allegations set forth in the  
2 Complaint (in this case, the Counter Complaint), the Court may also consider documents of  
3 which it has taken judicial notice. *See* F.R.E. 201; *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th  
4 Cir. 2007). Here, the Court takes judicial notice of and considers herein the documents attached  
5 to Plaintiff’s Request for Judicial Notice, which are documents from prior judicial proceedings  
6 directly affecting the instant matter. Dkt. #7 and Exhibits A-E thereto. The Court may properly  
7 take judicial notice of documents such as these whose authenticity is not contested, and which  
8 are proceedings in other courts so long as those proceedings have a direct relation to the matters  
9 at issue in the case before the Court. *Allen v. City of Los Angeles*, 92 F.3d 842 (9th Cir. 1992)  
10 (noting that a court “may take notice of proceedings in other courts, both within and without the  
11 federal judicial system, if those proceedings have a direct relation to matters at issue.” (quoting  
12 *United States ex rel. Robinson Rancheria Citizens Council v. Borneo*, 971 F.2d 244, 248 (9th  
13 Cir. 1992)), *overruled in part on other grounds by Acri v. Varian Assocs.*, 114 F.3d 999, 1000  
14 (9th Cir. 1997).

## 17           2. *Res Judicata*

18           The doctrine of *res judicata* “bar(s) all grounds for recovery which could have been  
19 asserted, whether they were or not, in a prior suit between the same parties . . . on the same cause  
20 of action.” *Costantini v. Trans World Airlines*, 681 F.2d 1199, 1201 (9th Cir. 1982) (internal  
21 quotations omitted); *see also Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th  
22 Cir. 2001) (“The doctrine is applicable whenever there is (1) an identity of claims, (2) a final  
23 judgment on the merits, and (3) identity or privity between parties.”) (internal quotations  
24 omitted). The doctrine serves the important public policy of providing “an end to litigation” and  
25 ensures that “matters once tried shall be considered forever settled as between the parties.”  
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1 *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 401-02, 101 S. Ct. 2424, 69 L. Ed. 2d 103  
2 (1981).

3 To determine whether a subsequent lawsuit involves the same causes of action as a prior  
4 suit, the Court must consider the following four factors: (1) whether rights established by the  
5 prior judgment would be impaired by prosecution of the second action, (2) whether both actions  
6 present substantially the same evidence, (3) whether both actions involve infringement of the  
7 same right, and (4) whether both actions arise out of the same transactional nucleus of facts.  
8 *Costantini*, 681 F.2d at 1201-02. Of these four factors, the last is most important. *Id.* at 1202;  
9 *see also Owens*, 244 F.3d at 714 (“The central criterion in determining whether there is an identity  
10 of claims between the first and second adjudications is whether the two suits arise out of the same  
11 transactional nucleus of facts.”) (internal quotations omitted).  
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#### 14 **B. Defendant Delfierro’s Counterclaims**

15 Ms. Delfierro has made a number of Counterclaims arising from her allegation that  
16 Plaintiff/Counter-Defendant Pensco Trust has improperly re-recorded certain documents to  
17 correct errors with the chain of title. Dkt. #31 at *Counterclaim Facts*, ¶¶ 3.1-3.16. Although  
18 Ms. Delfierro recognizes that there has been prior litigation between the same parties involving  
19 the same property which included chain of title issues, it appears she is now claiming that the re-  
20 recording of documents after the prior litigation concluded has given rise to the instant  
21 Counterclaims. *Id.*  
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23 Defendant argues that all of the elements of *res judicata* are met with respect to these  
24 Counterclaims. Dkt. #33 at 6-9. First, it argues that the prior litigation involved substantially  
25 the same claims. The Court agrees. Indeed, Ms. Delfierro’s Counterclaims in this litigation  
26 continue to attack Plaintiff’s ownership of the mortgage note, and focus on alleged title defects.  
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1 Dkt. #31 at ¶¶ 3.6-3.14. Claims regarding Plaintiff's ownership have already been litigated and  
2 resolved in Plaintiff's favor. Dkt. #34, Exhibit E at sub-exhibit H. After hearing evidence and  
3 argument in a bench trial, state court Judge Carol A. Schapira concluded that "PENSCO is the  
4 beneficial owner of the Note and Deed of Trust with power and authority to enforce the same."  
5 *Id.* While the record reflects that multiple Assignments of Deeds of Trust were rerecorded in  
6 2015 to "correct recording sequence," Dkt. #34, Ex. E at sub-exhibits D, E and G, Judge Schapira  
7 noted that the documents had not been recorded at the time of her decision, but reached the same  
8 conclusion with respect to PENSCO's interest in the Note. *Id.* ("Although this particular  
9 Assignment of Deed of Trust has not yet been recorded, it remains valid between the signatories,"  
10 . . . . "The Court finds Plaintiff has not proven there is any other claimant other than PENSCO  
11 to the beneficial interest in her Note and Deed of Trust."). Thus, the Court finds that even though  
12 Ms. Delfierro focuses on the fact that some title documents were rerecorded after the prior  
13 litigation concluded, the Counterclaims are still aimed at attacking whether PENSCO is the  
14 beneficial owner of the Note. Further, the actions appear to present substantially the same  
15 evidence, and arise out of substantially the same nucleus of facts. Accordingly, the first element  
16 if the doctrine of *res judicata* – identity of claims – is met.  
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20 Moreover, there appears no dispute that the second and third elements – final judgment  
21 on the merits and identity or privity between parties – are also met. Accordingly, the Court agrees  
22 that the doctrine applies and Defendant Delfierro's Counterclaims are hereby dismissed.  
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#### 24 IV. CONCLUSION

25 Having reviewed Plaintiff/Counter-Defendant's Motion to Dismiss (Dkt. #33), the  
26 documents in support thereof, and the remainder of the record, the Court hereby ORDERS:  
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- 28 1. Plaintiff/Counter-Defendant's Motion to Dismiss (Dkt. #33) is GRANTED.

1 2. Defendant/Counter-Plaintiff Delfierro's Counterclaims are DISMISSED in their  
2 entirety.

3 3. The parties' motions for summary judgment remain pending and will be resolved by  
4 separate Order in due course.

5 DATED this 21<sup>st</sup> day of June 2017.  
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9 RICARDO S. MARTINEZ  
10 CHIEF UNITED STATES DISTRICT JUDGE  
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